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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application MICHAEL D. O'SHEA	Examiner: Marilyn Macasiano
	Art Unit: 3688
Serial No.: 10/748,763	
	Deposit Account: 04-1403
Confirmation No.: 2711	
	Customer No.: 22827
Filed: DECEMBER 30, 2003	

Title: RF-BASED ELECTRONIC SYSTEM AND METHOD FOR AUTOMATIC CROSS-MARKETING PROMOTIONS OFFERS AND CHECK-OUTS

APPELLANT'S REPLY APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.41 for the subject application, appellant hereby submits its reply appeal brief to the Examiner's Answer mailed February 14, 2009.

7. APPELLANT'S REPLY TO EXAMINER'S RESPONSE TO ARGUMENT:

B. Claims 10, 14-19 and 21-27 are patentable under 35 U.S.C. § 103(a) over Sloane in view of Humble.

These claims are drawn to an invention that uses a scale as part of a system that provides cross-marketing promotional offers to a customer that is in the process of shopping in a store.

One major problem with the rejections is the fact that Humble is not even trying to solve the same problem that is solved by appellant's invention. Appellant's invention is a system that provides cross-marketing promotional offers to a customer that is in the process of shopping in a store. Humble tries to solve the problem of theft by customers who might scan a less expensive product's UPC barcode and then place in the cart a more expensive product either larger in weight or volume or a more expensive brand.

Moreover, neither Sloane nor Humble appreciates how a scale on the shopper's cart claims would be applicable to the cross-marketing issues solved by appellant's invention.

Beginning at the bottom of page 13 and continuing through page 14 of the Examiner's Answer, the Response to Arguments section contended (emphasis in original):

> Secondly, Humble discloses that the scale may measure the weight of each individual product or the weight of the shopping cart (i.e., total weight of all products) and determine the difference between the cart prior to the removal of the product at the check-out and after removal, thus determining the weight of the removed product. (column 1, line 27-127). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Sloane to incorporate a measuring device, such as a scale, into the cart in order to verify that

> the scanned product is actually the one placed into the cart (or removed from the cart and placed into the bag at check-out). One would have been motivated to use a scale in the cart in this manner in view of Humble's disclosure that systems using product weight to identify the product had been around for years prior to the invention. The Examiner notes that incorporating such a scale on the cart would also allow the customer to weight loose produce, such as fresh fruits and vegetables, without searching for a hanging scale as is commonly located within a grocery supermarket.

The flaw in this argument begins with the fact that Sloane already has a sophisticated video surveillance system associated with each cart and therefore has no need for a measuring device such as a scale in the same cart to perform the verification. The addition of a scale that is posited by the Office seems driven primarily by the attempt to present a prima facie Section 103(a) rejection.

As to the hanging scale argument in particular, Humble does not teach a scale carried by a cart. According to Humble, the customer would need to wait until check-out to learn the weight of the customer's fruits and vegetables. And this fact is both not convenient and hardly surprising, because Humble is only concerned with the customer's proclivity to steal, not with the customer's convenience during shopping.

Accordingly, appellant respectfully submits that claims 10, 14-19 and 21-27 are patentable under 35 U.S.C. § 103(a) over Sloane in view of Humble.

It is perhaps noteworthy that by advancing the above-quoted argument of the Examiner's Answer, the Office seems to be conceding that a video camera surveillance system as in Sloane does not constitute "a measuring device" as that term must be interpreted according to appellant's specification. This concession has import regarding the rejections of claims 1 – 9 and 11 – 13.

Conclusion

The final rejections of claims 1-19 and 21-27 should be reversed, and these claims should be allowed to issue in a patent.

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: 23 March 2009

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